

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BARBARA A. WILHELM,
Plaintiff

v.

COMMONWEALTH OF PA.;
PENNSYLVANIA STATE POLICE;
COLONEL PAUL J. EVANKO,
COMMISSIONER; LIEUTENANT
COLONEL THOMAS K. COURY; and
CAPTAIN MICHAEL. D. SIMMERS,
Defendants

NO. 1:CV-01-1057

(JUDGE RAMBO)

FILED
HARRISBURG, PA

MAR 17 2003

MARVE D'ANDREA, CLERK
Deputy Clerk

**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
MOTION FOR INTEREST ON JURY VERDICT AND
AWARD OF FRONT PAY**

INTRODUCTION

This action asserted a variety of claims against defendants in connection with plaintiff's employment as a Legislative Specialist with the Pennsylvania State Police. On June 28, 2002, this Court granted defendants summary judgment on all of plaintiff's claims except for one. (Memorandum and Order of June 28, 2002).

The remaining claim, a Title VII retaliatory dismissal claim, was tried to a jury in September 2002. At the time of trial no state claims remained in the action. (*Id.*). The jury rendered a verdict in favor of plaintiff and awarded damages in the amount of \$250,000. Following a subsequent hearing on equitable relief, the

Court awarded plaintiff reinstatement and an additional \$27,148.05 in front pay. (Memorandum and Order of February 5, 2003).

Plaintiff has now moved for interest on both awards. Plaintiff seeks interest on both awards from the dates they were awarded until the dates they are paid. (Pl. Mot. for Int. ¶¶ 4, 5). She also claims that the appropriate rate of interest is 6% based on state law. (*Id.*, ¶6).

Defendant submits this memorandum in opposition to plaintiff's motion.

ARGUMENT

THE RATE OF INTEREST DUE PLAINTIFF IS GOVERNED BY 28 U.S.C. §1961 AND NOT BY STATE LAW.

Defendant does not dispute the periods for which plaintiff seeks interest. Defendant does disagree with the rate of interest plaintiff seeks, however. Plaintiff asks for 6% interest based on state law. (Pl. Mot. For Int., ¶6). Federal not state law applies.

Interest on judgments in federal court is governed by 28 U.S.C. §1961. *Alkon v. United States*, 239 F.3d 565 (3d Cir. 2001) (interest rate under §1961 applies to federal actions not the rate under law of Virgin Islands). That section provides that “interest shall be calculated from the date of the entry of the judgment,

at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.” 28 U.S.C. §1961(a).

Although the statute refers to interest calculated after the date judgment is entered, the courts have regularly applied the rate to prejudgment interest as well. *See Holmes v. Pension Plan of Bethlehem*, 213 F.3d 124 (3d Cir. 2000) (district court did not abuse its discretion in awarding prejudgment interest based on the rate contained in §1961); *O’Neill v. Sears, Roebuck & Co.*, 108 F.Supp. 443 (E.D. Pa. 2000) (applying §1961 rate to both pre and post-judgment interest).

The weekly average 1-year constant maturity Treasury yield published by the Federal Reserve for the relevant periods in this case are 1.32% for the week ending January 31, 2003, the week prior to the Court’s award of front pay, and 1.7% for the week ending September 6, 2002, the week prior to the jury’s award. (fedreserve.gov/releases/h15/20030203).


Accordingly, the Court should award interest on the monetary award in this case based on 28 U.S.C. §1961 and not based upon state law.

CONCLUSION

For all of the preceding reasons, the Court should grant interest on the the damages and front pay awarded in this action at the rate provided by 28 U.S.C. §1961 and not on the rate provided by state law.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY: 
SUSAN J. FORNEY
Chief Deputy Attorney General
I.D. No. 27744

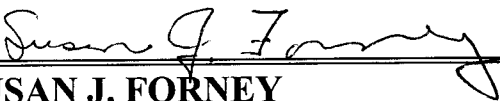
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DATED: March 17, 2003

CERTIFICATE OF SERVICE

I, **SUSAN J. FORNEY**, Chief Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on March 17, 2003, I caused to be served the foregoing document entitled **Memorandum in Opposition to Plaintiff's Motion for Interest on Jury Verdict and Award of Front Pay** by depositing same in the United States Mail, first class, postage prepaid in Harrisburg, Pennsylvania upon the following:

**Nathan C. Pringle, Jr., Esquire
3601 N. Progress Avenue, Suite 200
Harrisburg, PA 17110**



SUSAN J. FORNEY
Chief Deputy Attorney General